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IN THE

Supreme Court of the United States

OCTOBER TERM 1969

No. 904

CONTINENTAL OIL COMPANY,
ATLANTIC RICHFIELD COMPANY,
GETTY OIL COMPANY, AND
CITIES SERVICE OIL COMPANY,

Petitioners,

v.

THE LONDON STEAM-SHIP OWNERS' MUTUAL
INSURANCE ASSOCIATION, LTD.,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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IN THE

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CONTINENTAL OIL COMPANY,
ATLANTIC RICHFIELD COMPANY,
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v.

THE LONDON STEAM-SHIP OWNERS' MUTUAL
INSURANCE ASSOCIATION, LTD.,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Continental Oil Company, Atlantic Richfield Company, Getty Oil Company, and Cities Service Oil Company pray that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit entered in this Cause on September 23, 1969.

OPINIONS BELOW

The opinion of the District Court is unreported and is printed in Appendix C to this Petition, *infra,* p. 25a. The opinion of the Court of Appeals is not yet reported and is printed in Appendix B to this Petition, *infra,* p. 5a.

JURISDICTION

The judgment of the Court of Appeals was entered on September 23, 1969. The jurisdiction of this Court is invoked under the Act of June 25, 1948, c. 646, 62 Stat. 928, 28 U.S.C. § 1254(1).

QUESTIONS PRESENTED

1. Whether the victims of a collision between a ship and a fixed platform on the outer continental shelf off the coast of Louisiana are entitled to invoke the direct action statute of that state against the shipowner's liability insurer as adopted federal law pursuant to the provisions of the Outer Continental Shelf Lands Act.

2. Whether the adoptive provisions of the Outer Continental Shelf Lands Act are inapplicable to causes within the admiralty and maritime jurisdiction.

STATUTES INVOLVED

1. The Outer Continental Shelf Lands Act, c. 345, § 4, 67 Stat. 462, 43 U.S.C. § 1333(a). The entire subsection of the statute is printed in Appendix A, *infra*, p. 1a. The material portion is as follows:

> "The Constitution and laws and civil and political jurisdiction of the United States are extended to * * * fixed structures which may be erected [on the Outer Continental Shelf] * * * to the same extent as if the Outer Continental Shelf were an area of exclusive Federal jurisdiction located within a state. * * *
>
> "To the extent that they are applicable and not inconsistent with this subchapter or with other Federal laws * * *, the civil and criminal laws of each adjacent State * * * are declared to be the law of the United States for [such] fixed structures * * *. All of such

applicable laws shall be administered and enforced by the appropriate officers and courts of the United States * * * ."

2. The Direct Action Statute of Louisiana, Acts 1958, No. 125, LA.REV.STAT. 22:655. The entire statute is printed in Appendix A, *infra*, p. 2a. The material portion is as follows:

"Liability policy; * *

"* * The injured person * * shall have a right of direct action against the insurer within the terms and limits of the policy * *. This right of direct action shall exist whether the policy of insurance sued upon was written or delivered in the state of Louisiana or not and whether or not such policy contains a provision forbidding such direct action, provided the accident or injury occurred within the state of Louisiana. * *

"It is also the intent of this Section that all liability policies within their terms and limits are executed for the benefit of all injured persons * * to whom the insured is liable; * *."

3. The Admiralty Extension Act, c. 526, 62 Stat. 496, 46 U.S.C. § 740. The entire statute is printed in Appendix A, *infra*, p. 3a. The material portion is as follows:

"The admiralty and maritime jurisdiction of the United States shall extend to and include all cases of damage or injury to person or property, caused by a vessel on navigable water, notwithstanding that such damage or injury be done or consummated on land."

STATEMENT OF THE CASE

Petitioners are owners of a drilling and production platform fixed on the outer continental shelf in the Gulf of Mexico off the coast of Louisiana. On and from this platform they are engaged in drilling for and producing oil and gas pursuant to a lease granted by the United States of America.

The SS KIMON is an ocean going cargo ship, manned by a Greek crew, documented under the laws of Liberia, and owned and operated by Evangelistria Shipping Corp., a Liberian corporation. Evangelistria's liability growing out of the operations of the KIMON was insured by the respondent, a British entity.

On October 4, 1965, the SS KIMON, navigating off the coast of Louisiana in the Gulf of Mexico enroute from New Orleans, Louisiana, toward Lake Charles, Louisiana, collided with the petitioners' platform, damaging it in the sum of $247,500. (The material facts are set out in the complaint [Tr. 1], stipulation [Tr. 9], and amended stipulation [Tr. 80].) Petitioners sued the KIMON in Houston, and Evangelistria there filed in response a suit to limit its liability.

Invoking the jurisdictional provisions of the Outer Continental Shelf Lands Act (c. 345, § 4, 67 Stat. 462, 43 U.S.C. § 1333(b)) and the admiralty and maritime jurisdiction of the District Court (c. 139, § 79, 63 Stat. 101, 28 U.S.C. § 1333), the petitioners also filed this suit in Louisiana citing the Louisiana statute providing for direct action against liability insurers (Acts 1958, No. 125, LA. REV. STAT. 22:655),[1] contending that such provision has been adopted as federal law applicable to this cause by declaration of the Congress of the United States in the Outer Continental Shelf Lands Act (c. 345, § 4, 67 Stat. 462, 43 U.S.C. § 1333[a]). Service on the respondent was effected by serving the Secretary of State of Louisiana (LA. REV. STAT. 22:1253; F.R.C.P. 4[d][7]).

The respondent filed a motion to quash service of process and to dismiss for lack of personal jurisdiction, which the

[1] The operation of this statute was before this Court in *Watson* v. *Employers Liability Assur. Corp.*, 348 U.S. 66, and *Maryland Casualty Company* v. *Cushing*, 347 U.S. 409.

District Court denied. The Court of Appeals did not address itself to this action by the District Court.

The respondent also filed a motion to dismiss for failure to state a claim upon which relief could be granted, contending that because the location of the casualty was outside the territorial jurisdiction of the State of Louisiana that state's direct action statute was inapplicable. The District Court concluded that since the direct action statute did not by its own terms apply to causes of action arising outside the State of Louisiana it could not here be invoked by the petitioners, granted the respondent's motion, and dismissed the petitioners' complaint. (Opinion, Appendix C, *infra*, p. 25a; Judgment, Appendix E, *infra*, p. 31a.) The Court of Appeals, concluding that the direct action statute was not adopted as federal law because applicable federal maritime law was sufficient to determine the rights of those involved in a marine collision, affirmed the District Court. (Opinion, Appendix B, *infra*, p. 5a; Judgment, Appendix D, *infra*, p. 30a.)

During the pendency of this case in the Court of Appeals, the Texas litigation was dismissed upon payment to the petitioners of $147,500 and the stipulation that the KIMON was solely responsible for the collision and Evangelistria not entitled to limit its liability, such disposition being without prejudice to the petitioner's right to prosecute the instant suit in Louisiana for the remaining $100,000 of their damages.

REASONS FOR GRANTING THE WRIT

I

Prior to the decision of this court in *Rodrigue* v. *Aetna Cas. & Sur. Co.*, 395 U.S. 352, it had long been the view of the Court of Appeals for the Fifth Circuit that, in spite of

the provisions of the Outer Continental Shelf Lands Act for application of state law as adopted federal law, Congress really had intended that the federal maritime law be applied, to the exclusion of *any* state law, to any case arising on the outer continental shelf or any structure thereon. See *Dore* v. *Link Belt Company,* 391 F.2d 671, *reversed, Rodrigue* v. *Aetna Cas. & Surety Co.,* 395 U.S. 352; *Loffland Brothers Company* v. *Roberts,* 386 F.2d 540, *cert. denied,* 389 U.S. 1040; *Ocean Drilling & Exp. Co.* v. *Berry Bros. Oilfield Service,* 377 F.2d 511; *Pure Oil Co.* v. *Snipes,* 293 F.2d 60. In reversing the Court of Appeals in *Rodrigue* v. *Aetna Cas. & Surety Co.,* 395 U.S. 352, this Court made clear that it was not the intention of Congress that structures on the outer continental shelf be treated as exclusive creatures of the admiralty. Holding that a death caused on a platform on the outer continental shelf was not caused "on the high seas", this Court found the federal admiralty Death on the High Seas Act not applicable and held the death act of the adjacent state applicable as adopted federal law.

The instant case differs from *Rodrigue* because its subject matter, a collision between a ship and an offshore platform, is within the admiralty and maritime jurisdiction by virtue of the Admiralty Extension Act, c. 526, 62 Stat. 496, 46 U.S.C. § 740, *and* within the provisions of the Outer Continental Shelf Lands Act, 67 Stat. 462, 43 U.S.C. §1332 *et seq.* While recognizing that its earlier views of the supremacy and exclusiveness of the admiralty law on the outer continental shelf may have been too broad (see opinion below, Appendix B, *infra,* p. 22a, fn. 29), the Court of Appeals in the instant case, finding solid ground for holding that this case does belong to the admiralty, reverted, in effect, to its original position that such a determination, in spite of the plain provisions of the Outer Continental Shelf Lands Act, *precludes* the application of *any* adjacent state

law as adopted federal law — *even state law that would have been applicable in a federal admiralty court if the case had arisen in the waters of the adjacent state.*[2] In *Rodrigue* this Court was concerned with whether maritime law was to apply at all on the facts in that case. This Court's reasoning and analysis in that context do not support the conclusion, announced by the Court of Appeals, that, if maritime law does apply to a case occurring on an offshore platform, even state law which would be enforced in a federal admiralty court in the adjacent state cannot be applied as adopted federal law.

Whether the adoptive provisions of the Outer Continental Shelf Lands Act are to be given effect in a case which involves a platform on the outer continental shelf but which is also subject to the admiralty jurisdiction is an important question of federal law which has not been, but should be, settled by this Court. While this case, as now stipulated, involves a claim of only $100,000 for property damages, millions of dollars in other property damage, as well as personal injuries, have resulted from collisions between ships and platforms on the outer continental shelf off the coast of Louisiana alone, and with the ever increasing activity off shore and the multiplication of exploration and production platforms on the outer continental shelf, many of which are manned, it must be anticipated that there will be more. Whether those who are injured and who have their property damaged on these platforms as a result of collisions

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[2] It is long settled that rights arising under the Louisiana Direct Action Statute in marine casualties are enforceable in federal courts in Louisiana at law and in admiralty. *Olympic Towing Corp.* v. *Nebel Towing Co.*, ... F.2d ..... (5th Cir. 1969); *Alcoa Steamship Company* v. *Charles Ferran & Company*, 383 F.2d 46, *cert. denied*, 393 U.S. 836; *Coleman* v. *Jahncke Serv., Inc.*, 341 F.2d 956, *cert. denied*, 382 U.S. 974; *Lovless* v. *Employers' Liability Assurance Corporation*, 218 F.2d 714; *Cushing* v. *Maryland Casualty Company*, 198 F.2d 536, *vacated, Maryland Casualty Company* v. *Cushing*, 347 U.S. 409.

or other casualties originating on vessels operating in this area are entitled to pursue rights prescribed by state law or may be restricted to those found in the admiralty law without reference to state law is a question which is and will be critical to many besides these petitioners.

For example, under the Court of Appeals' holding in this case, injured victims of maritime platform casualties off Louisiana will be denied the right to utilize, as federal law, the direct action statute of that state to recover from a shipowner's liability insurer without regard to the shipowner's own statutory liability limitation. Under the Court of Appeals' holding, if the crane which killed Dorr in the *Rodrigue* case had been operated from the barge instead of the platform where Dorr was working, his survivors would have no right against the liability insurers of the barge operator. They are permitted to invoke the state direct action statute as adopted federal law only if the wrongful act in question originated on the platform. But it is the direct action against a vessel owner's liability insurer which is of particular benefit to the victim because it is not subject to the shipowner's statutory liability limitation,[3] and it is this direct action of which the victim on the platform is deprived by the decision of the Court of Appeals herein.

These serious issues were not reached by this Court in *Rodrigue*. It is respectfully submitted that it is important to a great and developing offshore industry and to the individuals involved in and affected by it that these questions be settled by this Court.

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[3] *Olympic Towing Corp.* v. *Nebel Towing Co.*, ... F.2d ..... (5th Cir. 1969); *Cushing* v. *Maryland Casualty Company*, 198 F.2d 536, *vacated*, *Maryland Casualty Company* v. *Cushing*, 347 U.S. 409.

II

The Court of Appeals expressed concern that application of state law as federal law in this case would cause international repercussions. Opinion, Appendix B, *infra*, p. 19a-24a. While there is indeed a certain amount of foreign and interstate ship traffic off Louisiana's shore, most of the vessels subject to admiralty jurisdiction in these waters which are commonly in close proximity to these artificial islands are themselves engaged in the offshore oil and gas industry. Why should they not be subject to laws such as those found in the state out of which they operate? Furthermore, no good reason is suggested why a foreign ship (and those at interest on it, including its liability insurers) causing damage to a platform fixed off the Louisiana coast should not expect to be subjected to the admiralty law as applied in the adjacent state. The pristine freedom of the outer continental shelf has already been compromised, in a sense, by the announced extension of the civil and political jurisdiction of the United States and its sanction of the construction of artificial islands there. Surely its right to undertake that course includes the right to prescribe laws regulating the rights of its citizens on these structures to be secure in their persons and property. What is more logically and fairly to be anticipated, by a foreign or domestic vessel, than that the federal law applied to a case involving damage, injury, or death on an offshore platform caused by a vessel will be the same law that would govern such a collision in the adjacent state? Imposition of the Louisiana direct action statute, as adopted federal law pursuant to the Outer Continental Shelf Lands Act, in no way restricts the movement of any vessel in international waters and thus does not, in the international sense, interfere with the character of the water over the outer continental shelf as "high seas."

Surely the people engaged in our offshore industry should not be deprived of the rights spelled out for them in adjacent state law, on the basis of some announced international considerations, without the magnitude and validity of such considerations ever receiving the full appraisal of this Court.

III

The decision of the Court of Appeals is in conflict with the premise announced by this Court in *Rodrigue*:

> "The Lands Act makes it clear that federal law, supplemented by state law of the adjacent State, is to be applied to these artificial islands as though they were federal enclaves in an upland State." 395 U.S. ....., 23 L. Ed. 2d 364.

This approach, along with the plain language of the Outer Continental Shelf Lands Act itself to the same effect, is put aside by the Court of Appeals as "a lot of fictionalizing." (Opinion, Appendix B, *infra,* p. 15a.) But it is clear that if the petitioners' platform were treated as a federal enclave within the State of Louisiana, the direct action statute would be available to them. This concept is discussed in *James Stewart & Co.* v. *Sadrakula,* 309 U.S. 94, 99-104, holding that a state statutory safety regulation requiring the use of certain planking during any construction was applicable as federal law during the building of a post office. Please see also the discussion in *Chicago, R.I. & P.R. Co.* v. *McGlinn,* 114 U.S. 542, 546-7, holding that a Kansas statute relating to recovery against a railroad for the injury to livestock on its right of way carried over into the law governing the Fort Leavenworth Military Reservation. The only state law not applicable as federal law in a federal enclave is that which conflicts with federal law. This is the very concept spelled out in

the Outer Continental Shelf Lands Act adopting, as federal, state law which is "applicable and not inconsistent" with federal law. The question begging approach of the Court of Appeals, *i.e.*, the *ad hoc* inquiry as to the "need" for the state law invoked, is unworkable and violates the plain intent of the Congress.

The insistence by the Court of Appeals on the exclusiveness of the admiralty law in this case is contrary to this Court's reasoning in *Rodrigue,* is not called for by the federal statute, and deprives these petitioners and others who may be injured or may suffer damages offshore of important rights which are provided in the law of the adjacent state and which should be available to them under the federal statute. Clarification of the law in this area by this Court is urgently needed.

CONCLUSION

WHEREFORE, petitioners pray that a Writ of Certiorari issue to the United States Court of Appeals for the Fifth Circuit.

Respectfully submitted,

SWEENEY J. DOEHRING
JOSEPH NEWTON
Counsel for Petitioners

APPENDIX A

The Outer Continental Shelf Lands Act, c. 345, § 4, 67 Stat. 462, 43 U.S.C. § 1333(a):

"Constitution and United States laws; laws of adjacent States; publication of projected State lines; restriction on State taxation and jurisdiction.

"(1) The Constitution and laws and civil and political jurisdiction of the United States are extended to the subsoil and seabed of the outer Continental Shelf and to all artificial islands and fixed structures which may be erected thereon for the purpose of exploring for, developing, removing, and transporting resources therefrom, to the same extent as if the outer Continental Shelf were an area of exclusive Federal jurisdiction located within a State: *Provided, however,* That mineral leases on the outer Continental Shelf shall be maintained or issued only under the provisions of this subchapter.

"(2) To the extent that they are applicable and not inconsistent with this subchapter or with other Federal laws and regulations of the Secretary now in effect or hereafter adopted, the civil and criminal laws of each adjacent State as of the effective date of this subchapter are declared to be the law of the United States for that portion of the subsoil and seabed of the outer Continental Shelf, and artificial islands and fixed structures erected thereon, which would be within the area of the State if its boundaries were extended seaward to the outer margin of the outer Continental Shelf, and the President shall determine and publish in the Federal Register such projected lines extending seaward and defining each such area. All of such applicable laws shall be administered and enforced by the appropriate officers and courts of the United States. State taxation laws shall not apply to the outer Continental Shelf."

"(3) The provisions of this section for adoption of State law as the law of the United States shall never

be interpreted as a basis for claiming any interest in or jurisdiction on behalf of any State for any purpose over the seabed and subsoil of the outer Continental Shelf, or the property and natural resources thereof or the revenues therefrom."

The Direct Action Statute of Louisiana, Acts 1958, No. 55 as amended 125, LA. REV. STAT. 22:655:

"No policy or contract of liability insurance shall be issued or delivered in this state, unless it contains provisions to the effect that the insolvency or bankruptcy of the insured shall not release the insurer from the payment of damages for injuries sustained or loss occasioned during the existence of the policy, and any judgment which may be rendered against the insured for which the insurer is liable which shall have become executory, shall be deemed prima facie evidence of the insolvency of the insured, and an action may thereafter be maintained within the terms and limits of the policy by the injured person, or his or her survivors mentioned in Revised Civil Code Article 2315, or heirs against the insurer. The injured person or his or her survivors or heirs hereinabove referred to, at their option, shall have a right of direct action against the insurer within the terms and limits of the policy; and such action may be brought against the insurer alone, or against both the insured and insurer jointly and in solido, in the parish in which the accident or injury occurred or in the parish in which an action could be brought against either the insured or the insurer under the general rules of venue prescribed by Art. 42, Code of Civil Procedure. This right of direct action shall exist whether the policy of insurance sued upon was written or delivered in the State of Louisiana or not and whether or not such policy contains a provision forbidding such direct action, provided the accident or injury occurred within the State of Louisiana. Nothing contained in this Section shall be construed to affect the provisions of the policy or contract if the same are not in violation of the laws of this State. It is the intent of this Section that any action brought

hereunder shall be subject to all of the lawful conditions of the policy or contract and the defenses which could be urged by the insurer to a direct action brought by the insured, provided the terms and conditions of such policy or contract are not in violation of the laws of this State.

"It is also the intent of this Section that all liability policies within their terms and limits are executed for the benefit of all injured persons, his or her survivors or heirs, to whom the insured is liable; and that it is the purpose of all liability policies to give protection and coverage to all insureds, whether they are named insured or additional insured under the omnibus clause, for any legal liability said insured may have as or for a tort-feasor within the terms and limits of said policy."

The Admiralty Extension Act, c. 526, 62 Stat. 496, 46 U.S.C. §740:

"The admiralty and maritime jurisdiction of the United States shall extend to and include all cases of damage or injury to person or property, caused by a vessel on navigable water, notwithstanding that such damage or injury be done or consummated on land.

"In any such case suit may be brought in rem or in personam according to the principles of law and the rules of practice obtaining in cases where the injury or damage has been done and consummated on navigable water: *Provided*, That as to any suit against the United States for damage or injury done or consummated on land by a vessel on navigable waters, the Public Vessels Act or Suits in Admiralty Act, as appropriate, shall constitute the exclusive remedy for all causes of action arising after June 19, 1948, and for all causes of action where suit has not been hitherto filed under the Federal Tort Claims Act: *Provided further*, That no suit shall be filed against the United States until there shall have expired a period of six months after the claim has been presented in writing

to the Federal agency owning or operating the vessel causing the injury or damage."

APPENDIX B

IN THE

United States Court of Appeals

FOR THE FIFTH CIRCUIT

No. 25372

CONTINENTAL OIL COMPANY, ET AL,

Appellants-Appellees,

v.

THE LONDON STEAM-SHIP OWNERS' MUTUAL INSURANCE ASSOCIATION, LTD.,

Appellee-Appellant.

(AND REVERSE TITLE)

Appeals from the United States District Court for the Western District of Louisiana

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(September 23, 1969)

Before BROWN, Chief Judge, DYER, Circuit Judge and GARZA, District Judge.

BROWN, Chief Judge: Although this case involves a collision between the S/S Kimon and Continental Oil Com-

pany's drilling and production platform fixed on the Outer Continental Shelf in the Gulf of Mexico off the coast of Louisiana, that is the simplest thing about the litigation. What complicates it is not necessarily the United Nations complexion of the ship's company or notions of flag of convenience,[1] or the involvement of British underwriters[2] whose mere mention evokes the strong exciting aroma of Lloyds' Coffee House. The complication comes from a Louisiana statute ostensibly designed to protect the public but long thought of in some quarters as a neat way to gain, through diversity jurisdiction, the benefit of a Seventh Amendment Federal Court jury trial in a civil law state where a jury's verdict carried no more, if as much, appellate weight than that of a Judge.[3] It is known as the Direct

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[1] Leedom v. Kynes, 1958, 358 U.S. 174, 79 S.Ct. 180, 3 L.Ed.2d 210. The ship, owned by Evangelista Shipping Corp. (Shipowner), a Liberian Corporation, was manned by a Greek crew.

[2] Presumably to localize it in Louisiana terms, the insurer is characterized as an entity insuring the liabilities of the vessel. Undoubtedly the underwriter more truly bears the felicitous name of a "P & I Club", 1. J. Arnould, Marine Insurance § 80 (13th ed. 1950); F. Templeman & C. Greenacre, Marine Insurance § 294 (4th ed. 1934), since the collision was with a fixed object, not another vessel, which would have precipitated a claim under the Four/Fourths Running Down Clause of a Hull policy. See 1. J. Arnould, *supra* at § 81; F. Templeman & C. Greenacre, *supra* at 294. See also, Nardelli v. Stuyvesant Ins. Co., 5 Cir., 1958, 258 F.2d 718, 1958 A.M.C. 2404, on second petition for rehearing, 5 Cir., 1959, 269 F.2d 592.

[3] See Lumbermen's Mut. Cas. Co. v. Elbert, 1954, 348 U.S. 48, 75 S.Ct. 151, 99 L.Ed. 59; Watson v. Employers Liab. Assur. Corp., 1954, 348 U.S. 66, 75 S. Ct. 166, 99 L.Ed. 74.

For diversity it is a "beaten enemy". Coleman v. Jahncke Service, Inc., 5 Cir., 1965, 341 F.2d 956, 961, n. 15, *cert. denied*, 1966, 382 U.S. 794, 86 S.Ct. 538, 15 L.Ed.2d 465; 1964 Amendment 28, U.S.C.A. § 1332.

Action Statute[4] and legislatively expunges the traditional "no action" clause of a liability policy to permit a party injured in Louisiana to sue the liability insurer directly without going through the process of suit and judgment against the Assured.

Like so much legal jousting, the principle may be worth more than the principal. This is just one more of the irrepressible efforts to force a Delphic answer to what fifteen years later has perhaps turned out to be something less

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[4] The statute provides:

> "No policy or contract of liability insurance shall be issued or delivered in this state, unless it contains provisions to the effect that the insolvency or bankruptcy of the insured shall not release the insurer from the payment of damages for injuries sustained or loss occasioned during the eixstence of the policy, and any judgment which may be rendered against the insured for which the insurer is liable which shall have become executory, shall be deemed prima facie evidence of the insolvency of the insured, and an action may thereafter be maintained within the terms and limits of the policy by the injured person, or his or her survivors mentioned in Revised Civil Code Article 2315, or heirs against the insurer. The injured person or his or her survivors or heirs hereinabove referred to, at their option, shall have a right of direct action against the insurer within the terms and limits of the policy; and such action may be brought against the insurer alone, or against both the insured and insurer jointly and in solido, in the parish in which the accident or injury occurred or in the parish in which an action could be brought against either the insured or the insurer under the general rules of venue prescribed by Art. 42, Code of Civil Procedure. This right of direct action shall eixst whether the policy of insurance sued upon was written or delivered in the State of Louisiana or not and whether or not such policy contains a provision forbidding such direct action, provided the accident or injury occurred within the State of Louisiana. Nothing contained in this Section shall be construed to affect the provisions of the policy or contract if the same are not in violation of the laws of this State. It is the intent of this Section that any action brought hereunder shall be subject to all of the lawful conditions of the

than the riddle[5] or "grisly spectre"[6] supposed.[7] About the only new wrinkle, *cf. Mike Hooks, Inc.* v. *Pena,* 5 Cir., 1963, 313 F.2d 696, 1963 A.M.C. 355, is that here the occurrence takes place on, over, or around the high seas many miles beyond even the most extravagant of Louisiana claims of territorial sovereignty but within the area characterized as the Outer Continental Shelf by the Congressional Act[8] that sought to compromise, if not solve, the rich intramural controversy over oil in the tidelands.

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policy or contract and the defenses which could be urged by the insurer to a direct action brought by the insured, provided the terms and conditions of such policy or contract are not in violation of the laws of this State.

It is also the intent of this Section that all liability policies within their terms and limits are executed for the benefit of all injured persons, his or her survivors or heirs, to whom the insured is liable; and that it is the purpose of all liability policies to give protection and coverage to all insureds, whether they are named insured or additional insureds under the omnibus clause, for any legal liability said insured may have as or for a tort-feasor within the terms and limits of said policy. As amended Acts"

LRS 22:655.

[5] Guillot v. Cenac Towing Co., 5 Cir., 1966, 366 F.2d 898, 1966 A.M.C. 2685; Ex Parte Tokio Marine Ins. Co., 5 Cir., 1963, 322 F2d 113, 1964 A.M.C. 308.

[6] Coleman v. Jahncke Service, Inc., 1965, 341 F.2d 956, 957, 1966 A.M.C. 1115, *cert. denied,* 1966, 382 U.S. 974, 86 S.Ct. 538, 15 L.Ed.2d 465.

[7] Olympic Towing Corp. v. Nebel Towing Co., 5 Cir., 1969, ... F.2d ....., ... A.M.C. ..... [No. 26386, July 9, 1969] holds that for a Louisiana inland based maritime occurrence the direct action Insurer has a direct liability beyond that of the Shipowner held to be entitled to limit liability, 46 U.S.C.A. §§ 181 *et seq.*

[8] The Outer Continental Shelf Lands Act, 43 U.S.C.A. §§ 1331 *et seq.*

What brings this all about is the damage caused when S/S Kimon, an ocean going vessel, collided with the offshore drilling platform rigged for the exploration for and production of oil, which was fixed to the ocean's floor in the Outer Continental Shelf. The occurrence, although formerly perhaps a nonmartime claim, was clearly a martime claim under the Extension of Admiralty Jurisdiction Act. [9] And it was so treated by Shipowner and drilling platform owner alike.[10] With no indication then, since, or now that the

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[9] "The admiralty and maritime jurisdiction of the United States shall extend to and include all cases of damage or injury to person or property, caused by a vessel on navigable water, notwithstanding that such damage or injury be done or consummated on land.

In any such case suit may be brought in rem or in personam according to the principles of law and the rules of practice obtaining in cases where the injury or damage has been done and consummated on navigable water: *Provided,* That as to any suit against the United States for damage or injury done or consummated on land by a vessel on navigable waters, the Public Vessels Act or Suits in Admiralty Act, as appropriate, shall constitute the exclusive remedy for all causes of action arising after June 19, 1948, and for all causes of action where suit has not been hitherto filed under the Federal Tort Claims Act: *Provided, further,* That no suit shall be filed against the United States until there shall have expired a period of six months after the claim has been presented in writing to the Federal agency owning or operating the vessel causing the injury or damage."
46 U.S.C.A. § 740.

[10] The platform owner filed a libel *in rem* against S/S Kimon in the Federal District Court in Texas and presumably obtained security under the traditional stipulation (bond) to release the vessel from seizure. Shipowner filed a petition for limitation of liability, 46 U.S.C.A. §§ 181 *et seq,* Adm. R. F. (4), in which the platform owner filed a claim and Shipowner filed a cross claim against the platform owner under the *Duke of York,* British Transport Comm'n v. United States, 1957, 354 U.S. 129, 77 S.Ct. 1103, 1 L.Ed.2d 1234, 1957 A.M.C. 1151.

admiralty remedies were in any way incomplete, inconvenient or unavailable[11] — either substantively or procedurally — the platform owner filed the instant suit in the Louisiana Federal Court against Shipowner's underwriter under the Louisiana Direct Action Statute (note 4, *supra*) to recover the identical damages occasioned by the fault of S/S Kimon, her owners, etc. In response to the defendant underwriter's motions[12] the Court dismissed the Louisiana direct action suit. Giving the maritime shoals (see notes 5, 6, and 7, *supra*) a wide berth, this knowledgeable Louisiana Admiralty Judge set his course solely on Louisiana law. He held that since the accident happened outside of Louisiana, and the Louisiana Courts had held that the Direct Action Statute would not be given extraterritorial effect, the Statute did not apply.

That destination was correct and we affirm, although the course was wrong since the dead reckoning did not reckon with the Outer Continental Shelf Lands Act and specifically whether under it Louisiana's Direct Action Statute has been

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[11] By supplemental stipulation subsequent to argument we are informed that the parties have dismissed the admiralty proceedings in Texas (note 9, *supra*) under a settlement in which Shipowner paid $147,500 of the platform owner's agreed damages of $247,500. It was expressly stipulated that the collision "was proixmately caused by the sole fault and neglect of the S/S Kimon and those in charge of her, with the privity and knowledge of" Shipowner. That litigation "has been dismissed without prejudice to this action" now before us.

The parties by supplemental briefs also spell out that the question subsequently resolved in *Olympic Towing*, (note 7, *supra*), as to the liability of the direct insurer in excess of the Shipowner's limited liability, is no longer in the case.

[12] We have not assayed underwriter's attack on its amenability to service of process.

adopted as federal law and made applicable to this case.[13] Disclaiming any prescience superior to that of the Trial Judge, *William* v. *United States,* 5 Cir., 1968, 405 F.2d 234, 239, the course has been plotted for us by the stellar-aided inertial guidance system of the recent intervening decision in *Rodrigue* v. *Aetna Case & Sur. Co.,* 1969,.... .... U.S....., 89 S.Ct. ....., 23 L.Ed.2d 360.

The problem facing Congress in establishing a statutory structure for Outer Continental Shelf Lands was what law should be prescribed. The Court in *Rodrigue* traces the ebb and flow of legislative tides from which came the scheme of federal adoption of applicable adjacent state law as binding federal law. Under this scheme federal law and jurisdiction are the sole sources of governmental power[14] with that

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[13] Without more we reject again, as so often and most recently done in *Olympic Towing,* the underwriter's plea that we reconsider these earlier decisions: Coleman v. Jahncke Serv., Inc., 5 Cir., 1965, 341 F.2d 956, 960-61, *cert. denied,* 1966, 382 U.S. 974, 86 S.Ct. 538, 15 L.Ed.2d 465; Loveless v. Employers' Liab. Assurance Corp., 5 Cir., 1955, 218 F.2d 714; Cushing v. Maryland Cas. Co., 5 Cir., 1952, 198 F.2d 536, 538, *vacated,* 1954, 347 U.S. 409, ... S.Ct. ....., 98 L.Ed. 806.

They urge that the terms "ocean marine" in LRS 22:655 and "marine insurance" in LRS 22:1252 compel a determination that Louisiana intended to exclude marine insurance from the Direct Action Statute.

[14] The jurisdictional approach Congress used is best illustrated by the language of the Outer Continental Lands Act itself:

> "It is declared to be the policy of the United States that the subsoil and seabed of the outer Continental Shelf appertain to the United States and are subject to its jurisdiction, control, and power of disposition as provided in this subchapter."

43 U.S.C.A. § 1332(a), and

> "Constitution and United States laws; laws of adjacent States; publication of projected State lines; restriction on State taxation and jurisdiction.

federal law coming from (i) federal law and (ii), where applicable, law of the adjacent state.[15]

The Court summed up the legislative process, objective and result in this way:

"The Constitution and laws and civil and political jurisdiction of the United States are extended to the subsoil and seabed of the outer Continental Shelf and to all artificial islands and fixed structures which may be erected thereon for the purpose of exploring for, developing, removing, and transporting resources therefrom, to the same extent as if the outer Continental Shelf were an area of exclusive Federal jurisdiction located within a State: *Provided, however,* That mineral leases on the outer Continental Shelf shall be maintained or issued only under the provisions of this subchapter."

43 U.S.C.A. § 1333(a) (1).

For references to the Congressional debates involving this concept see *Rodrigue, supra* at 365-66.

[15] Outer Continental Shelf Lands Act also provides:

"To the extent that they are applicable and not inconsistent with this subchapter or with other Federal laws and regulations of the Secretary now in effect or hereafter adopted, the civil and criminal laws of each adjacent State as of the effective date of this subchapter are declared to be the law of the United States for that portion of the subsoil and seabed of the outer Continental Shelf, and artificial islands and fixed structures erected thereon, which would be within the area of the State if its boundaries were extended seaward to the outer margin of the outer Continental Shelf, and the President shall determine and publish in the Federal Register such projected lines extending seaward and defining each such area. All of such applicable laws shall be administered and enforced by the appropriate officers and courts of the United States. State taxation laws shall not apply to the outer Continental Shelf.

"The provisions of this section for adoption of State law as the law of the United States shall never be interpreted as a basis for claiming any interest in or jurisdiction on behalf of any State for any purpose over the seabed and subsoil of the outer Continental Shelf, or the property and natural resources thereon or the revenues therefrom."

43 U.S.C.A. § 1333(a) (2) (3).

> The purpose of the Outer Continental Shelf Lands Act was to define a body of law applicable to the seabed, the subsoil, and the fixed structures such as those in question here on the outer Continental Shelf. That this law was to be federal law of the United States, applying state law only as federal law and then only when not inconsistent with applicable federal law, is made clear by the language of the Act. Section 3 makes it the "policy of the United States" that the affected areas "appertain to the United States and are subject to its jurisdiction, control, and power of disposition." Section 4 makes the "Constitution and laws and civil and political jurisdiction of the United States" apply "to the same extent as if the outer Continental Shelf were an area of exclusive Federal jurisdiction located within a State." Since Federal law, because of its limited function in a federal system, might be inadequate to cope with the full range of potential legal problems, the Act supplemented gaps in the federal law with state law through the "adoption of state law as the law of the United States." Under § 4, the adjacent State's laws were made "the law of the United States for [the relevant subsoil and seabed] and artificial islands and fixed structures erected thereon," but only to "the extent that they are applicable and not inconsistent with . . . other Federal laws."
>
> It is evident from this that federal law is "exclusive" in its regulation of this area, and that state law is adopted only as surrogate federal law.

.....U.S. at ....., ...S.Ct. at ....., 23 L.Ed.2d at 364-65. But the result obtained because there (i) was *no* federal law and (ii) there was a state law covering the precise situation.

How different is our case. The damage was caused by collision of S/S Kimon with the structure itself and "when the damage is caused by a vessel admittedly in admiralty jurisdiction, the Admiralty Extension Act [see note 9, *supra*] would now make available the admiralty remedy in any event." *Rodrigue, supra*, at ....., U.S. ....., ...S.Ct. ....., 23 L.Ed.2d 367.

Thus there was a fully effective maritime right and remedy. (See note 10, *supra*.) In this situation is adjacent Louisiana law needed or permitted?

Whether intended as the analytical course in every instance, the Court in *Rodrigue* started with the inquiry: Was there a federal law? Finding none — which eliminated also the question of inconsistency — the state law which pertained to the occurrence became the exclusive federal law. It could readily do this: On accepted maritime principles for deaths resulting from accidents occurring completely on these "artifical islands", the Death on the High Seas Act — "of its own force under admiralty principles" — did not apply and "the Lands Act deliberately eschewed the application of admiralty principles to these novel structures." *Rodrigue, supra* at ..... U.S. ....., ... S.Ct. ....., 23 L.Ed.2d 364. In terms of Congressional divination the query technically turns on the meaning to be given "applicable" since adjacent laws become federal law only to "the extent [i] they are applicable and [ii] not inconsistent with "* * * Federal laws * * *." 43 § 1333(a) (2), (see note 15, *supra*.)

The platform owner contends that the term "applicable" as used in the Outer Continental Shelf Lands Act "can only mean applicable to the subject matter in question." And, the argument continues, since this is a suit involving a

policy of liability insurance, the Direct Action Statute by its terms covers that very situation. Thus the Direct Action Statute is "applicable" within the meaning of the Act, and being "applicable" affords its own direct relief.

On such reading the necessity for state law (in the sense of a right being lost in its absence) is not the significant factor. State law becomes merely a matter of affording some gain or benefit or advantage not available if state law can not be invoked. Such a reading, of course, puts almost 100% emphasis on the "not inconsistent * * * with federal laws" element of §1333(a) (2) — a problem which the platform owners circumnavigate by not only moving the Louisiana law out to sea but moving the occurrence back into Louisiana as though it had taken place on inland waters.[16] That is a lot of fictionalizing. And in more austere words it imputes to Congress the purpose generally to export the whole body of adjacent law onto the Outer Continental Shelf for automatic application to any and all occurrences *unless* — with the *unless* being limited to (a) specific provisions within the Act[17] or (b) inconsistent federal law. By whatever characterization expressed, in determining what law is to govern, that approach accords initially a superiority to adjacent state law — the question of federal law comes into play only after this process excludes state law. This is hardly in keeping with the course of legislative history

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[16] They rely on our cases, notes 5, 6, 7, and 13, *supra*, in which we have repeatedly (and recently) held that the Direct Action Statute does apply to maritime cases occurring on inland navigable waters, and its application does not disturb the essential uniformity of the admiralty.

[17] An illustration is the express adoption, § 1333(c), of the Longshoremens Act 33 U.S.C.A. §§ 901 *et seq* rather than the Louisiana Compensation Act for injuries to employees.

in which the notion of supremacy of state law administered by state agencies was expressly rejected.[18]

Keeping in mind that the tidelands controversy[19] had deep political and emotional currents centered around the clash between national sovereignty and states rights — a dispute in which geography separated the adversaries as inland states sought compensating advantages to offset those claimed by coastal states as historically and exclusively theirs[20] — the deliberate choice of federal law, federally administered,[21] requires that "applicable" be read in terms of necessity — necessity to fill a significant void or gap.

This is the recurring theme of Rodrigue. Thus, early in the opinion the Court states since "Federal law, because of its limited function in a federal system, might be inadequate to cope with the full range of potential legal problems, the Act supplemented *gaps* in the federal law with state law

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[18] See *Rodrigue, supra* where the Court said:

> "The opponents of the Act realized full well that state law was being used only to supplement federal law, and Senator Long introduced an amendment to the Act which would have made 'the laws of each State applicable to the newly acquired area, and . . . the officials of such State [the agents empowered] to enforce the laws of the State in the newly acquired area.' in arguing for his amendment, Senator Long asserted that '[i]t is even more important that State laws should apply on the artificial islands than on natural islands . . . .' But the amendment was rejected. See 99 Cong. Rec. 7232-7236."

..... U.S. at ....., ... St.Ct. at ....., 23 L.Ed. 2d at 344.

[19] See United States v. California, 1947, 332 U.S. 19, 67 S.Ct. 1658, 91 L.Ed. 1889.

[20] See United States v. Louisiana, 1950, 339 U.S. 669, 70 S.Ct. 914, 94 L.Ed. 1216; United States v. Texas, 1950, 339 U.S. 707; 70 S. Ct. 918, 94 L.Ed. 1219.

[21] §§ 1332(a), 1333(a) (1), notes 14 and 15, *supra*.

through the 'adoption of state law as the law of the United States'." ..... U.S. at ....., 89 S.Ct. at ....., 23 L.Ed.2d at 365 (emphasis added).

Again after referring to the Committee report which stated that "Paragraph (2) adopts State law as Federal law, to be used when Federal statutes or regulations of the Secretary of the Interior are inapplicable,"[22] Mr. Justice White summed it up for the Court emphatically. "This language makes it clear that state law could be used to *fill* federal *voids.*" .....U.S. at ....., 89 S.Ct. at ....., 23 L.Ed.2d at 365 (emphasis added).

This approach was reflected by the statements of Senators Cordon, who presented the Act to the Senate, and Anderson, a member of the Conference Committee: "As Senator Anderson, a member of the conference committee, put it: 'The real point is . . . that the language in section 4 provides that Federal laws and regulations shall be applicable in the area, but that *where there is a void, the State law may be applicable . . . .*' Remarks of Senator Anderson, 99 Cong. Rec. 7164. Senator Cordon noted that this view was 'entirely correct' and added that 'These laws, by the terms of the act, are enacted as Federal law.'" *Rodrigue, supra,* ..... U.S. at ....., 89 S.Ct. at ....., 23 L.Ed. 2d at 365-66 (emphasis added).

Of course there is no such necessity here. The collision was a classic maritime case within the validly extended Admiralty jurisdiction in which both substantive rights and remedies (see note 9, *supra.*) were quite ample. There is no void, there are no gaps. If there were, the Admiralty, under the guidance of a Judge having all of the flexibility of a sea-going Chancellor, *cf. Hadjipateras* v. *Pacifica, S.A.*,

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[22] Report of the Senate Committee on Interior and Insular Affairs, S.Rep. No. 411, 83d Cong., 1st Sess. 23 (1953).

5 Cir., 1961, 290 F.2d 697, 1961 A.M.C. 1417, has adequate resources[23] without calling on adjacent state law.

This approach likewise makes something more out of the "not inconsistent" element of § 1333(a) (2) than a mere disjunctive for mechanical invocation and assessment. In determining whether it is appropriate to call in adjacent state law, it permits an analysis in the light of the interests sought to be served in the domestic intramural contest over the oil rich tidelands without disturbing interests of an International character having equal, if not greater importance in a day in which an incident on the High Seas may trigger a fissioned Armaggedon.

Both by the terms of the Outer Continental Shelf Land Act and by International convention, sovereignty of the adjacent nation (not subsidiary state) is a "horizontal" one limited to the seabed and structures fixed thereon[24] with full freedom of the seas accorded to all nations in the surrounding waters.[25]

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[23] See, e.g., Tri-State Oil Tools Indus., Inc. v. Delta Marine Drilling Co., 5 Cir., 1969, 410 F.2d 178, 186; The Hudson, S.D.N.Y.,, 1883, 15 F. 162.

[24] § 1332. "Congressional declaration of policy; jurisdiction; construction

(a) It is declared to be the policy of the United States that the subsoil and seabed of the outer Continental Shelf appertain to the United States and are subject to its jurisdiction, control, and power of disposition as provided in this subchapter."

This is reiterated in § 1333 (a) (1) note 14, *supra*. See Guess v. Reed, 5 Cir., 1961, 290 F.2d 622 *cert. denied*, 368 U.S. 953, 82 S.Ct. 394, 7 L.Ed.2d 388.

[25] "This subchapter shall be construed in such manner that the character as high seas of the waters above the outer Continental Shelf and the right to navigation and fishing therein shall not be affected." 43 U.S.C.A. § 1333(b).

See Atlantic Development Corp. v. United States, 5 Cir., 1967, 379 F.2d 818, 827-28, n.27 reading:

"Treaties and Other International Acts Series No. 5578 (1964), adopted at Geneva April 29, 1958, signed on behalf of the United States September 15, 1958, approved by the

The United States has interest in its relations to other nations quite different from those among its own several states. Thus, while it does not offend the constitutional imperative for the uniformity of admiralty[26] for the Louisiana Direct Action Statute to apply to maritime cases occurring on inland waters of Louisiana,[27] quite different considerations enter in mandatorily applying that to some — but a very select class — cases on the Outer Continental Shelf. The class is select in the sense that it must somehow be physically-causally related to the structure ("artificial island") without which Louisiana law is as irrelevant as that of Pakistan. This has nothing to do with so-called Louisiana interests. For no matter how closely related to Louisiana interests, for example, of local ownership of vessels involved, the Louisiana residence of operating crew members, performance of specific work for Louisiana based concerns, the transportation of men or materials to and from Outer Continental Shelf Land drilling sites, or the like, the Direct Action Statute could not be invoked for any one of a countless variety of maritime cases — collision, capsizing, personal injury, cargo loss — unless there is a causal connection with the fixed structure.

Senate on May 26, 1960 (106 Cong.Rec. 11182-83) ratified by the President on March 24, 1961 (44 State Dep't Bull. 609) and entered into force June 19, 1964 (50 State Dep't Bull. 946).

'The Convention provides:

'Article 2.

'1. The coastal State exercises the continental shelf sovereign rights for the purpose of exploring it and exploiting its natural resources * * *.'"

[26] *See, e.g.*, Southern Pacific Co. v. Jensen, 1917, 243 U.S. 205, 37 S.Ct. 524, 61 L.Ed. 1086; Wilburn Boat Co. v. Firemans Funds Ins. Co., 1955, 348 U.S. 310, 75 S.Ct. 368, 99 L.Ed. 337; G. Gilmore & Black, Admiralty §§ 1-17 at 43-44 (1957). *Cf.* Huron Portland Cement Co. v. City of Detroit, 1960, 362 U.S. 440, 80 S.Ct. 813, 4 L.Ed. 852, 1960 A.M.C. 1549.

[27] See notes 6 and 13, *supra*.

Since this demonstrates that Louisiana interests in *maritime cases* could not have been a matter of Congressional concern in its pattern of physically-restricted-adoptive law, in assaying congressional purpose the focus must be on National and International interests.

This brings into play both physical and legal factors. For these waters not only are legally "high seas" (see note 25, *supra*.), they are in fact "high seas."[28] This

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[28] The shoreward boundary of the Outer Continental Shelf is the most seaward boundary of United States navigable waters over submerged lands. 43 U.S.C.A. § 1331(a) provides:

> "The term 'outer Continental Shelf' means all submerged lands lying seaward and outside of the area of lands beneath navigable waters as defined in section 1301 of this title, and of which the subsoil and seabed appertain to the United States and are subject to its jurisdiction and control;"

43 U.S.C.A. § 1301, The Submerged Lands Act provides:

> Definitions
>
> When used in this chapter —
>
> (a) The term "lands beneath navigable waters" means —
>
> (1) all lands within the boundaries of each of the respective States which are covered by nontidal waters that were navigable under the laws of the United States at the time such States became a member of the Union, or acquired sovereignty over such lands and waters thereafter, up to the ordinary high water mark as heretofore or hereafter modified by accretion, erosion, and reliction;
>
> (2) all lands permanently or periodically covered by tidal waters up to but not above the line of mean high tide and seaward to a line three geographical miles distant from the coast line of each such State and to the boundary line of each such State where in any case such boundary as it existed at the time such State became a member of the Union, or as heretofore approved by Congress, extends seaward (or into the Gulf of Mexico) beyond three geographical miles, and
>
> (3) all filled in, made, or reclaimed lands which formerly where lands beneath navigable waters, as hereinabove defined;
>
> (b) The term "boundaries" includes the seaward boundaries of a State or its boundaries in the Gulf of Mexico or any

of the Great Lakes as they existed at the time such State became a member of the Union, or as heretofore approved by the Congress, or as extended or confirmed pursuant to section 1312 of this title but in no event shall the term "boundaries" or the term "lands beneath navigable waters" be interpreted as extending from the coast line more than three geographical miles into the Atlantic Ocean or the Pacific Ocean, or more than three marine leagues into the Gulf of Mexico;

(c) The term "coast line" means the line of ordinary low water along that portion of the coast which is in direct contact with the open sea and the line marking the seaward limit of inland waters;

(d) The terms "grantees" and "leasees" include (without limiting the generality thereof) all political subdivisions, municipalities, public and private corporations, and other persons holding grants or leases from a State, or from its predecessor sovereign, if legally validated, to lands beneath navigable waters if such grants or leases were issued in accordance with the constitution, statutes, and decisions of the courts of the State in which such lands are situated, or of its predecessor sovereign: *Provided, however,* That nothing herein shall be construed as conferring upon said grantees or lessees any greater rights or interests other than are described herein and in their respective grants from the State, or its predecessor sovereign;

(e) The term "natural resources" includes, without limiting the generality thereof, oil, gas, and all other minerals, and fish, shrimp, oysters, clams, crabs, lobsters, sponges, kelp, and other marine animal and plant life but does not include water power, or the use of water for the production of power;

(f) The term "lands beneath navigable waters" does not include the beds of streams in lands now or heretofore constituting a part of the public lands of the United States if such streams were not meandered in connection with the public survey of such lands under the laws of the United States and if the title to the beds of such streams was lawfully patented or conveyed by the United States or any State to any person;

(g) The term "State" means any State of the Union;

(h) The term "person" includes, in addition to a natural person, an association, a State, a political subdivision of a State, or a private, public, or municipal corporation.

means that these structures may be, and often are,[29] far from the adjacent shore in the very track of merchantmen of all flags and of all nations plying recognized sea lanes of the Atlantic, Pacific and Gulf of Mexico.[30]

The major part of this traffic will have no concern with the particular adjacent state within whose artificial extended boundaries the structure happens to be. Many will be foreign flag vessels bound from a foreign place to an American port in a non-adjacent state. Many will be foreign flag ships en route to distant ports by way of the Panama Canal. Many will be American flag ships, cargo or tanker, under registry, 46 U.S.C.A. § 11, trading to and from foreign ports. Others will be American flag vessels, especially tankers under enrollment, 46 U.S.C.A. §§ 251, 259, 278, in

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[29] The platform involved here was about 50 miles off shore Louisiana. And in a case which likely founders under Rodrigue, the platform was 65 miles off Louisiana. Pure Oil Co. v. Snipes, 5 Cir., 1961, 293 F.2d 60, 1961 A.M.C. 1651.

[30] Protection of navigation and safety at sea was a major specific concern to be regulated exclusively by federally enacted law. 43 U.S.C.A. § 1333 (e) (1) (2):

> "The head of the Department in which the Coast Guard is operating shall have authority to promulgate and enforce such reasonable regulations with respect to lights and other warning devices, safety equipment, and other matters relating to the promotion of safety of life and property on the islands and structures referred to in subsection (a) of this section or on the waters adjacent thereto, as he may deem necessary."

The Coast Guard has promulgated extensive regulations covering such things as lights, fog signals, identification marks, guards and rails, communication equipment, fire fighting equipment, and life boats. See 33 CFR 140.01-146.05-30. See also § 1333(f):

> "(f) The authority of the Secretary of the Army to prevent obstruction to navigation in the navigable waters of the United States is extended to artificial islands and fixed structures located on the outer Continental Shelf."

the coastwise or intercoastal trade between United States ports in non-adjacent states.[31]

In the midst of all this traffic to which the Outer Continental Shelf Lands Act and International Convention (see notes 24, and 25) assure full, traditional freedom of the seas, it is unthinking that Congress ever remotely considered — even for the briefest moment — that by the rare coincidence of hitting a structure located 50 miles off shore Louisiana a local, non-maritime Louisiana statute could leap this distance to subject a foreign vessel owner[32] and her foreign, but amenable,[33] underwriters to a suit in a Louisiana Federal Court even though the vessel never had been and never would trade to and from Louisiana ports. If that is so, then it would be equally unthinking to suppose that Congress meant to import an exception by allow-

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[31] In the complaint emphasis was placed on the fact that at the time of the collision S/S Kimon was bound on an intrastate voyage from New Orleans to Lake Charles, Louisiana to discharge part of her cargo. Since as a foreign flag vessel she could not carry domestic coastwise cargo, 46 U.S.C.A. §§ 883, 251, 319, this circumstance is purely coincidental and there is no more Louisiana interest at stake here than had she hit the platform while bound to Houston, her subsequent port of call, or hit it returning across the Gulf on her homeward voyage.

[32] The Direct Action Statute does not, of course, confer jurisdiction over the owners or operators. But as with the fiction of *in rem* liability, *cf.* Continental Grain Co. v. Federal Barge Lines, Inc., 1961, 364 U.S. 19, 80 S.Ct. 1570, 4 L.Ed.2d 1540, *aff'g*, 5 Cir., 1959, 268 F.2d 240, 1959 A.M.C. 2158, it is very likely that — although increased insurance cost is not a factor in a direct action limitation situation, see Olympic Towing Corp. v. Nebel Towing Co., Supra, — the sophisticated world of retrospective rating plans and experience-adjusted premium costs the owner bears a considerable amount of a loss when the underwriter is cast.

[33] Louisiana, as do many states, has extermely broad statutes purporting to subject foreign insurance companies to in personam jurisdiction by substituted service, etc. On the issue not reached by us (see note 12, *supra*) presumably the Trial Judge found amenability based on the underwriter's activities for others than the owner of S/S Kimon.

ing adoption where, by a further rare coincidence, the foreign vessel, otherwise free to sail as she pleases, happens to hit the structure while bound to or from a Louisiana port. Any such "exception" would itself disrupt the basic underlying policy of non-interference with navigation on the high seas by making it necessary for underwriter or owner, or both, to first submit to the Louisiana Direct Action suit and then in it establish the right to the "exception."

These considerations become more significant in the light of today's multi-party donnybrooks, see *Grigsby* v. *Coastal Marine Service*, 5 Cir., 1969, ... F.2d ....., ... A.M.C. ..... [No. 22451, May 1, 1969] in which theories of initial, contingent and secondary liabilities orbit to an imaginative apocenter. Without physically touching the off shore structure to trigger the extension of Admiralty Act. (see note 9, *supra*) it is quite conceivable that the conduct of the foreign vessel might be found to have brought about damage to the structure caused physically by some other craft under circumstances in which the law would conclude that in legal effect it was the foreign vessel that "hit" the structure. Thus by a series of fictions and legal theories a foreign underwriter or owner, or both, find the freedom of the seas disrupted by a statute of a state not then visible and to which neither ever intended to go.

In this approach both "applicable" and the "not inconsistent" elements are interpreted together. The term "applicable" gets much of its meaning from factors bearing on "not inconsistent." Whether for off shore, unlike inland, martime cases we would hold the Direct Action Statute inconsistent we need not here determine. Taking into account the National and International interests behind that element we do hold that for this maritime case the Direct Action Statute is not applicable.

AFFIRMED.

APPENDIX C

IN THE UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF LOUISIANA
LAKE CHARLES DIVISION

CIVIL ACTION NO. 12,185

CONTINENTAL OIL COMPANY,
ATLANTIC RICHFIELD COMPANY, TIDEWATER OIL COMPANY,
AND CITIES SERVICE OIL COMPANY

v.

THE LONDON STEAM-SHIP OWNERS'
MUTUAL INSURANCE ASSN., LTD.

FOR PLAINTIFFS

Messrs.
Fulbright, Crooker, Freeman,
Bates and Jaworski
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HUNTER, JUDGE:

Plaintiffs filed this action against the liability insurer of a vessel which collided with their drilling platform located

off the coast of Louisiana in the waters of the Gulf of Mexico. Invoking the procedure prescribed by statute (LSA-R.S. 22:1253), plaintiffs requested that service be made upon the Secretary of State of Louisiana, and service was so made. All pertinent facts appear in a stipulation, made a part hereof by reference.

Defendant filed a motion to quash service and to dismiss for lack of personal jurisdiction. Defendant also prays that the suit be dismissed for a failure to state a claim. We proceed to a consideration of these contentions.

DEFENDANT'S MOTION TO QUASH SERVICE AND TO DISMISS FOR LACK OF PERSONAL JURISDICTION.

The basis of this exception is that defendant insurance underwriter transacts no business, has no office or place of business, and has no officer, director, employee or agent authorized to accept service in this district or in the State of Louisiana. It is then argued that if Section 1253 purports to provide for the exercise of such personal jurisdiction, then and in that case, under the due process doctrine of minimum contacts, any such construction of Section 1253 is constitutionally unsupportable.

The insurance policy here under consideration includes risks and operations in Louisiana. This is sufficient to constitute transacting of business in Louisiana within the meaning of LSA-R.S. 22:1253. We find that such process does not violate constitutional due process. In so holding we follow and adopt the reasoning of the District Court of the Eastern District of Louisiana in *Humble Oil & Refining Company* v. *M/V JOHN E. COON*, 207 F. Supp. 45 (1962).

DEFENDANT'S MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM.

The Outer Continental Shelf Lands Act provides in part:

> "The Constitution and laws and civil and political jurisdiction of the United States are extended to * * * fix structures which may be erected [on the outer Continental Shelf] * * * to the same extent as if the outer Continental Shelf were an area of exclusive Federal jurisdiction located *within a State.*" (Emphasis added) 43 U.S.C.A. § 1333(a)(1).

> "To the extent that they are applicable and not inconsistent with this subchapter or with other Federal laws * * *, the civil and criminal laws of each adjacent State * * * are declared to be the law of the United States for [such] fixed structures * * *. All of such applicable laws shall be administered and enforced by the appropriate officers and courts of the United States * * *." 43 U.S.C.A. § 1333(a)(2).

Plaintiffs' position can be succinctly stated: the Louisiana Direct Action Statute is applicable to a marine tort and creates an additional remedy for a damaged party; it is supplemental to and not inconsistent with federal law. Thus, the provisions of the Outer Continental Shelf Lands Act effected an adoption of the direct action as federal law.

There is no need to muddy the waters by seeking to solve the riddle as to what the Supreme Court meant in its 4-1-4 decision in *Maryland Casualty Company* v *Cushing*, 347 U.S. 409. Nobody really knows. The instant problem can, in my judgment, be disposed of on a simple basis.

The collision made the basis of this suit did not occur in Louisiana. It did not occur on waters which Louisiana could regard as within her territorial boundaries. True,

the applicable law (if not inconsistent with Federal law) is the Louisiana law, 43 U.S.C.A § 1333(a)(2). What is the Louisiana law? Surely, a consideration of extreme import in determining what adjacent state law is adopted as a result of the Continental Shelf Lands Act is the adjacent state's construction of its laws and the intended efficacy thereof. Louisiana courts have consistently held that the right to maintain a direct action exists only when the cause or right of action arose in Louisiana. *Hancock* v. *State Farm Mutual Automobile Insurance Co.*, (5 Cir., 1959), 267 F.2d 2; *Weingartner* v. *Fidelity Mutual Insurance Co.*, (5 Cir., 1953), 205 F.2d 833; *Hidalgo* v. *Fidelity & Casualty Co.* (5 Cir, 1953), 205 F.2d 834. Cf. *McManus* v. *Delta Fire & Casualty Co.* (5 Cir., 1958), 251 F.2d 496. The language of the statute itself is precise and limits its application to those cases where "the accident or injury occurred within the State of Louisiana."[1] The judicial construction by the Louisiana courts has been consistent. Louisiana has not extended the operation of its statute to encompass anything other than benefits to those who become involved in accidents or sustain injuries within the territorial borders of the State of Louisiana. *Guess* v. *Read*, (5 Cir., 1961), 290 F.2d 622, cert. denied 368 U.S. 957, 7 L.Ed.2d 388, 82 S.Ct. 394 (1962). Consequently, Congress, in enacting the Outer Continental Shelf Lands Act, did not extend the application of the Direct Action Statute to accidents or injuries which occurred on the Continental Shelf.

---

[1] LSA-R.S. 22:655. "Liability policy; * * *

"* * * The injured person * * * shall have a right of direct action against the insurer within the terms and limits of the policy * * *. This right of direct action shall exist whether the policy of insurance sued upon was written or delivered in the state of Louisiana or not and whether or not such policy contains a provision forbidding such direct action, *provided the accident or injury* occurred within the state of Louisiana." (Emphasis added)

CONCLUSION

Defendant's motion to quash service of process and to dismiss for lack of personal jurisdiction is denied. Defendant's motion to dismiss claimant's complaint for failure to state a claim is sustained.

Counsel for defendant should submit forthwith, on notice, an appropriate decree.

THUS DONE AND SIGNED at Lake Charles, Louisiana on this the 24th day of August, 1967.

Edwin F. Hunter, Jr.
United States District Judge

APPENDIX D

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

October Term, 1967

No. 25372

D. C. Docket No. CA 12,185

CONTINENTAL OIL COMPANY, *Et Al.*,
Appellants-Appellees,

v.

THE LONDON STEAM-SHIP OWNERS' MUTUAL INSURANCE ASSOCIATION, LTD.,
Appellee-Appellant.

(And Reverse Title)

Appeals from the United States District Court for the Western District of Louisiana.

Before BROWN, Chief Judge, DYER, Circuit Judge and GARZA, District Judge.

JUDGMENT

This cause came on to be heard on the transcript of the record from the United States District Court for the Western District of Louisiana, and was argued by counsel;

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, affirmed.

It is further ordered that appellants-appellees pay to appellee-appellant, the costs on appeal to be taxed by the Clerk of this Court.

September 23, 1969

Issued as Mandate:

APPENDIX E

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF LOUISIANA
LAKE CHARLES DIVISION

Continental Oil Company
Atlantic Richfield Company,
Tidewater Oil Company and
Cities Service Oil Company,
Plaintiffs

v.

The London Steam-Ship
Owner's Mutual
Insurance Association, Ltd.,
Defendant

C.A. No. 12,185

ORDER OF DISMISSAL

Heretofore, on August 24, 1967, came on to be heard (1) Defendant's Motion to Quash Service of Process obtained by Plaintiffs pursuant to Louisiana Revised Statutes 22:1253, issued and served upon the Secretary of State of Louisiana on October 4, 1966, and (2) Defendant's supplemental Motion to Dismiss for Failure to State a Claim.

And, the Court having considered the pleadings, stipulation, briefs and arguments of counsel, and having determined that Defendant's Motion to Quash should be denied, but that Defendant's Motion to Dismiss for Failure to State a Claim should be granted, for the reasons set forth in the Court's opinion rendered and entered in this matter on August 24, 1967.

Now, therefore, it is ORDERED, ADJUDGED and DECREED that Defendant's Motion to Quash Service of Process should be, and the same hereby is, denied, that Defendant's Motion to Dismiss should be, and the same

hereby is, granted, and that Plaintiffs' Complaint herein should be, and the same hereby is, dismissed, with cost herein to be borne by the Plaintiffs.

Entered at Lake Charles, Louisiana, on this the 15th day of September, 1967.

/s/ EDWIN F. HUNTER, JR.
United States District Judge

Approved as to Form:
JONES, KIMBALL, HARPER, TETE & WETHERILL
and
FULBRIGHT, CROOKER, FREEMAN, BATES & JAWORSKI

By /s/ JOSEPH NEWTON
Attorney for Plaintiffs
HALL, RAGGIO, FARRAR & BARNETT
and
ROYSTON, RAYZOR & COOK

By /s/ GEORGE W. RENAUDIN
George W. Renaudin
Attorneys for Defendant

SUPREME COURT, U. S.

JAN 9 1970

JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

October Term, 1969

NO. 904

CONTINENTAL OIL COMPANY, ATLANTIC RICHFIELD COMPANY, GETTY OIL COMPANY, and CITIES SERVICE OIL COMPANY,
Petitioners

v.

THE LONDON STEAM-SHIP OWNERS' MUTUAL INSURANCE ASSOCIATION, LTD.,
Respondent

RESPONDENT'S OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI

GEORGE W. RENAUDIN
Counsel for Respondent

Of Counsel:

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Petitioners

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Respondent

RESPONDENT'S OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI

STATUTES AND TREATIES INVOLVED

In addition to the statutes set forth in the Petition, Respondent would add the following:

1. The Outer Continental Shelf Lands Act, c. 345, Section 3, 67 Stat. 462, 43 U.S.C., Section 1332(a)(b).

(a) It is declared to be the policy of the United States that the subsoil and seabed of the Outer Con-

tinental Shelf appertain to the United States and are subject to its jurisdiction, control, and power of disposition as provided in this subchapter.

(b) This subchapter shall be construed in such manner that the character as high seas of the waters above the outer Continental Shelf and the right to navigation and fishing therein shall not be affected.

2. The Convention on the High Seas, 13 U.S. Treaties 2312, Articles 1 and 2:

ARTICLE 1

The term "high seas" means all parts of the sea that are not included in the territorial sea or in the internal waters of a State.

ARTICLE 2

The high seas being open to all nations, no State may validly purport to subject any part of them to its sovereignty. Freedom of the high seas is exercised under the conditions laid down by these articles and by the other rules of international law. It comprises, *inter alia*, both for coastal and non-coastal States:

(1) Freedom of navigation;
(2) Freedom of fishing;
(3) Freedom to lay submarine cables and pipelines;
(4) Freedom to fly over the high seas.

These freedoms, and others which are recognized by the general principles of international law, shall be exercised by all States with reasonable regard to the interests of other States in their exercise of the freedom of the high seas.

3. The Convention on the Continental Shelf, 15 U.S. Treaties 471, Articles 1 through 7. The entirety of Articles 1 through 7 is printed in Appendix "A", *infra*, pp. 13-16. Some of the more pertinent portions are as follows:

ARTICLE 3

> The rights of the coastal State over the continental shelf do not affect the legal status of the superjacent waters as high seas, or that of the airspace above those waters.

ARTICLE 5

* * *

> 2. Subject to the provisions of paragraphs 1 and 6 of this article, the coastal State is entitled to construct and maintain or operate on the continental shelf installations and other devices necessary for its exploration and exploitation of its natural resources, and to establish safety zones around such installations and devices and to take in those zones measures necessary for their protection.

* * *

> 4. Such installations and devices, though under the jurisdiction of the coastal State, do not possess the status of islands. They have no territorial sea of their own, and their presence does not affect the delimitation of the territorial sea of the coastal State.

QUESTION PRESENTED

In a maritime collision case involving a merchant vessel and a fixed structure on the Outer Continental Shelf, an area of limited but exclusive federal jurisdiction and control, in which the injured party properly invokes the admiralty and maritime jurisdiction, complete and ade-

quate in remedy, is there any gap, void, or other basis in the applicable federal law which requires or permits resort to the local law of Louisiana, specifically Louisiana's Direct Action statute, under the adoption of state law provision of the Outer Continental Shelf Lands Act?

REASONS FOR DENYING THE WRIT

The discretionary jurisdiction of this Court by certiorari need not be, and should not be, exercised in a case in which a Court of Appeals, not in conflict with any other Court of Appeals, applied the guidelines and principles set out by this Court in its determination of a choice of law problem. *Rodrigue, Et Al v. Aetna Cas. & Sur. Company, Et Al,* 395 U.S. 352 (June 9, 1969).

While Petitioner asserts that serious issues were not decided by this Court in *Rodrigue,* yet its guidance, as adopted by the Court of Appeals in the instant case neither decides nor forecloses from further resolution the myriad hypothetical situations which can readily be envisioned to arise on artificial islands and fixed structures on the Outer Continental Shelf. It could not be otherwise, because the Court of Appeals, in the instant case, as in the problem before this Court in *Rodrigue,* did not undertake to assay or decide issues not then before it.

Giving effect to the overall purpose of the Outer Continental Shelf Lands Act, in context with its international ramifications, and with explicit regard for international law as contained in the Convention on the High Seas and the Convention on the Continental Shelf, the Court of Appeals in the instant case held, as *Rodrigue* held:

1. That the federal law properly applies, and that the applicable federal law is the admiralty law, complete in substance and remedy.

2. Inasmuch as the federal law, the admiralty law, complete in and of itself in substance and remedy was applicable, yielding no gap, void, or other basis upon which initially to address any inquiry to the law of the landlocked enclave of the coastal state of Louisiana, the Court recognized as this Court did in *Rodrigue,* that the limited extension of United States jurisdiction and control to the Outer Continental Shelf was for purposes wholly distinct and apart from those applicable to the resolution of a simple admiralty collision case.

3. Thus according superiority to the federal law, as the Outer Continental Shelf Lands Act requires, and finding no necessity therefore to resort to any but the applicable federal law, the Court of Appeals properly concluded that any question of inconsistency as between potentially adoptable state law and the federal law was unecessary, a determination in all respects consistent with the Outer Continental Shelf Lands Act, the referred to International Conventions, and this Court's holding in *Rodrigue.*

Thus, the conclusions and holding of the Court of Appeals in this case are not in conflict with, but rather are based entirely upon the touchstone inquiry as stated by this Court in *Rodrigue* with respect to the reasons for the enactment of the "surrogate federal law"—adoption of state law provision, as follows:

"Since federal law, because of its limited function in a federal system, might be inadequate to cope with the full range of potential legal problems, the Act supplemented gaps in the federal law with state law through the 'adoption of state law as the law

of the United States'." 395 U.S. ____, 23 L.Ed.2d 365.

Therefore, the reasoning and analysis of this Court in *Rodrigue* are adhered to fully, and it will be soon enough for this Court to decide hypothetical questions of important federal law when, and if, they are indeed presented and present in litigation.

An examination of certain pertinent observations of this Court in the *Rodrigue* case reflects that the Fifth Circuit followed the guidelines and principles of *Rodrigue*, applying them as it directed to the fact situation of the case *sub judice*, reflecting the clear distinction between social problems intramural to the platform and the exploration for oil in the seabed, as opposed to the very different relationships encountered with the intervention of a "foreigner" to such activity such as Respondent herein who was merely using international waters, with a further recognition by the Fifth Circuit of the limited role of state law in the scheme of the Lands Act:

> "The Lands Act makes it clear that federal law, supplemented by state law of the adjacent State, is to be applied to these artificial islands as though they were federal enclaves in an upland State . . . . This was done in part because *men working on these islands are closely tied to the adjacent State, to which they often commute and on which their families live, unlike transitory seamen to whom a more generalized admiralty law is appropriate.*" 395 U.S. ____, 23 L.Ed.2d 364 (Emphasis supplied)
>
> * * *
>
> "Under Section 4, the adjacent State's laws were made 'the law of the United States for (the relevant

subsoil and seabed) and artificial islands and fixed structures erected thereon,' *but only to 'the extent that they are applicable and not inconsistent with . . . other Federal laws.'* It is evident from this that federal law is 'exclusive' in its regulation of this area, and that state law is adopted *only* as surrogate federal law." 395 U.S. ____, 23 L.Ed.2d 365 (Emphasis supplied)

"Paragraph (2) adopts State law as Federal law, to be used when Federal statutes or regulations of the Secretary of the Interior are inapplicable. *This language makes it clear that state law could be used to fill federal voids.*" 395 U.S. ____, 23 L.Ed.2d 365 (Emphasis supplied)

"Industrial accidents, accidental deaths, peace, and order present problems requiring a body of law for their solution."

* * *

". . ., but that where there is a void, the State law *may* be applicable . . ."

"The opponents of the Act realized full well that state law was being used only to supplement federal law, . . ." 395 U.S. ____, 23 L.Ed.2d 366 (Emphasis supplied)

"But when the damage is caused by a vessel admittedly in admiralty jurisdiction, the Admiralty Extension Act (46 U.S.C., Sec. 740) would now make applicable the admiralty remedy in any event."

* * *

"The accidents in question here (industrial accidents to platform workers) involve no collision with a vessel, . . ., and the accidents had no more connection with the ordinary stuff of admiralty than do accidents on piers." (Insert added) . . . "In these circumstances, the Seas Act—which provides an

> action in admiralty—clearly would not apply under conventional admiralty principles and, *since the Lands Act provides an alternative federal remedy through adopted state law, there is no reason to assume that Congress intended to extend those principles to create an admiralty remedy here.*" 395 U.S. ____, 23 L.Ed.2d 367.

Thus the whole thrust is that where an admiralty remedy exists there is no need under the Lands Act to look further to adjacent State law, a device used only to fill "voids" or "gaps" in existing Federal law which do not exist in a case involving a collision between a ship and a platform, for herein there is an "admiralty remedy in any event."

"Careful scrutiny of the hearings . . . convinces us . . . (of) the view that maritime law was inapposite to these fixed structures." 395 U.S. ____ 23 L.Ed.2d 368. This quotation refers to the initial attempts by Congress to place a platform in the position of a vessel. However, since admittedly admiralty law here applies, a ship collision case changes the entire outlook when it is recognized that *Rodrigue* sought to set forth principles applicable solely to the social type legislation necessary to regulate the relationship of the persons involved in the oil exploration only, but recognizing the distinction presented when a ship collides with a platform.

> "One theme running throughout the hearings was the close relationship between the workers on the islands and the adjoining states."
>
> "Thus the admiralty jurisdiction under the Seas Act no more applies to these accidents *actually occurring on the islands* than it would to accidents occurring in an upland federal enclave, etc. . . . At a minimum, the legislative history shows that

> accidents *on these structures*, which under maritime principles would be no more under maritime jurisdiction than accidents on a wharf located above navigable waters, were not changed in character by the Lands Act. Since the inapplicability of the Seas Act removes any obstacle to the application of state law by incorporation as federal law through the Lands Act, the decisions below are reversed." 395 U.S. ____, 23 L.Ed.2d 370 (Emphasis supplied)

Accordingly it is first necessary to remove the applicability of the federal law by this Court's decision in *Rodrigue* before reaching the "application of state law" by incorporation through the Lands Act. Here such inapplicability of federal law is non-existent since federal admiralty law is clearly recognized by the parties hereto as well as this Court's opinion in *Rodrigue* to control as opposed to the inapplicability of federal law (specifically admiralty law and the Seas Act) in *Rodrigue*.

These four major oil companies are in effect merely seeking additional rights to which they would not even have a color of a claim were their platform situated on any part of the Continental Shelf except off of one state—Louisiana. Their back door approach through the Lands Act to reach the Direct Action Statute of this one state is an effort to use a statute enacted basically for the aid of auto accident victims ashore in Louisiana who could not readily obtain redress for their injuries from the other driver, but were given this chance with the other driver's insurance carrier. Thus this effort by these petitioners is a far cry from the obvious legislative intent of the Direct Action Statute and of the Lands Act.

The Lands Act's history shows that it does not transport all local law to the Shelf simply where "not inconsistent"

with federal law but only where no federal law exists and state law therefore is needed to fill the "gaps" or "voids" *and* where state law is applicable. In a ship collision case on the high seas there is no vacuum to be filled due to the presence of the general maritime law, fully adequate in itself. There is no need to review again or expound upon the obvious distinction recognized by this Court in *Rodrigue*.

CONCLUSION

WHEREFORE, Respondent prays that the Petition for Writ of Certiorari be denied, presenting as it does no question of conflict with the decision of this Court in *Rodrigue*, and presenting no substantial question of federal law not already resolved against Petitioners in *Rodrigue*.

Respectfully submitted,

George W. Renaudin

GEORGE W. RENAUDIN
Counsel for Respondent

Of Counsel:

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PROOF OF SERVICE

I, George W. Renaudin, the counsel of record for Respondent, being a member of the Bar of the Supreme Court of the United States, hereby certify that on this day I served copies of the foregoing Opposition to the Petition for Writ of Certiorari upon all parties required to be served by mailing copies thereof, first class, postage prepaid, to counsel for Petitioners, Sweeny J. Doehring, Esq. and Joseph Newton, Esq. at their offices in the Bank of the Southwest Building, Houston, Texas, 77002, on this 7 day of January, 1970.

George W. Renaudin

APPENDIX A

CONVENTION ON THE CONTINENTAL SHELF

Article 1

For the purpose of these articles, the term "continental shelf" is used as referring (a) to the seabed and subsoil of the submarine areas adjacent to the coast but outside the area of the territorial sea, to a depth of 200 metres or, beyond that limit, to where the depth of the superjacent waters admits of the exploitation of the natural resources of the said areas; (b) to the seabed and subsoil of similar submarine areas adjacent to the coasts of islands.

Article 2

1. The coastal State exercises over the continental shelf sovereign rights for the purpose of exploring it and exploiting its natural resources.

2. The rights referred to in paragraph 1 of this article are exclusive in the sense that if the coastal State does not explore the continental shelf or exploit its natural resources, no one may undertake these activities, or make a claim to the continental shelf, without the express consent of the coastal State.

3. The rights of the coastal State over the continental shelf do not depend on occupation, effective or notional, or on any express proclamation.

4. The natural resources referred to in these articles consist of the mineral and other non-living resources of the sea-bed and subsoil together with living organisms belonging to sedentary species, that is to say, organisms

which, at the harvestable stage, either are immobile on or under the sea-bed or are unable to move except in constant physical contact with the sea-bed or the subsoil.

Article 3

The rights of the coastal State over the continental shelf do not affect the legal status of the superjacent waters as high seas, or that of the airspace above those waters.

Article 4

Subject to its right to take reasonable measures for the exploration of the continental shelf and the exploitation of its natural resources, the coastal State may not impede the laying or maintenance of submarine cables or pipe lines on the continental shelf.

Article 5

1. The exploration of the continental shelf and the exploitation of its natural resources must not result in any unjustifiable interference with navigation, fishing or the conservation of the living resources of the sea, nor result in any interference with fundamental oceanographic or other scientific research carried out with the intention of open publication.

2. Subject to the provisions of paragraphs 1 and 6 of this article, the coastal State is entitled to construct and maintain or operate on the continental shelf installations and other devices necessary for its exploration and the exploitation of its natural resources, and to establish safety zones around such installations and devices and to take in those zones measures necessary for their protection.

3. The safety zones referred to in paragraph 2 of this article may extend to a distance of 500 metres around the installations and other devices which have been erected, measured from each point of their outer edge. Ships of all nationalities must respect these safety zones.

4. Such installations and devices, though under the jurisdiction of the coastal State, do not possess the status of islands. They have no territorial sea of their own, and their presence does not affect the delimitation of the territorial sea of the coastal State.

5. Due notice must be given of the construction of any such installations, and permanent means for giving warning of their presence must be maintained. Any installations which are abandoned or disused must be entirely removed.

6. Neither the installations or devices, nor the safety zones around them, may be established where interference may be caused to the use of recognized sea lanes essential to international navigation.

7. The coastal State is obliged to undertake, in the safety zones, all appropriate measures for the protection of the living resources of the sea from harmful agents.

8. The consent of the coastal State shall be obtained in respect of any research concerning the continental shelf and undertaken there. Nevertheless, the coastal State shall not normally withhold its consent if the request is submitted by a qualified institution with a view to purely scientific research into the physical or biological characteristics of the continental shelf, subject to the proviso that the coastal State shall have the right, if it so desires, to participate or to be represented in the research, and that in any event the results shall be published.

Article 6

1. Where the same continental shelf is adjacent to the territories of two or more States whose coasts are opposite each other, the boundary of the continental shelf appertaining to such States shall be determined by agreement between them. In the absence of agreement, and unless another boundary line is justified by special circumstances, the boundary is the median line, every point of which is equidistant from the nearest points of the baselines from which the breadth of the territorial sea of each State is measured.

2. Where the same continental shelf is adjacent to the territories of two adjacent States, the boundary of the continental shelf shall be determined by agreement between them. In the absence of agreement, and unless another boundary line is justified by special circumstances, the boundary shall be determined by application of the principle of equidistance from the nearest points of the baselines from which the breadth of the territorial sea of each State is measured.

3. In delimiting the boundaries of the continental shelf, any lines which are drawn in accordance with the principles set out in paragraphs 1 and 2 of this article should be defined with reference to charts and geographical features as they exist at a particular date, and reference should be made to fixed permanent identifiable points on the land.

Article 7

The provisions of these articles shall not prejudice the right of the coastal State to exploit the subsoil by means of tunnelling irrespective of the depth of water above the subsoil.